IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

SAMUEL O. ST. CLAIR	)	
	)	
Plaintiff,	)	Civil Action No.: 7:04CV00154
	)	
v.	)	**MEMORANDUM OPINION**
	)	By: Hon. Glen E. Conrad
TOWN OF ROCKY MOUNT	)	United States District Judge
and ERIK L. MOLLIN	)	
	)	
Defendants.	)	

Samuel O. St. Clair brings this action pursuant to 42 U.S.C. § 1983 against the Town of Rocky Mount and Erik L. Mollin, alleging that the defendants violated his Fourth Amendment rights. Mr. St. Clair also asserts several state claims against the defendants, including assault, battery, false arrest, trespass, and intentional infliction of emotional distress. The case was originally filed in the Circuit Court for the County of Franklin on March 29, 2004. On April 1, 2004, the defendants removed the case to this court. The case is currently before the court on the defendants' motion for summary judgment. For the following reasons, the court will grant the defendants' motion with respect to the plaintiff's § 1983 claims. The court will remand the plaintiff's state claims to the Circuit Court for the County of Franklin.

BACKGROUND

On November 6, 2003, Mr. St. Clair's girlfriend, Judy Ripani, went to the police station in Rocky Mount, Virginia and advised Erik Mollin (Officer Mollin) and another police officer, Sergeant Engel, that she needed help. Ms. Ripani reported that Mr. St. Clair had pushed her, thrown a flower pot at her, and verbally abused her. Sergeant Engel advised Ms. Ripani that she could swear out a warrant against Mr. St. Clair or obtain a protective order. Ms. Ripani stated

that she was not interested in pursuing those options. Instead, Ms. Ripani wanted to retrieve her belongings from Mr. St. Clair's house, and she asked to have an officer accompany her. Ms. Ripani told the officers that she had been living with Mr. St. Clair.

Ms. Ripani drove to Mr. St. Clair's house and the police officers followed her in a marked patrol unit. After parking in front of the house, Ms. Ripani and the officers walked onto the front porch. Mr. St. Clair did not respond when Ms. Ripani knocked on the door. The officers told Ms. Ripani that she could enter the house if she had a key. When Ms. Ripani walked back to her car to retrieve a house key, Officer Mollin noticed a broken flower pot in the driveway. Officer Mollin then walked around to the side of the house, where he saw Mr. St. Clair standing in a doorway. Mr. St. Clair began yelling at Officer Mollin and told him to leave the property. Although Mr. St. Clair told Officer Mollin that he could not enter the house without a search warrant, the officer entered the house and handcuffed Mr. St. Clair.[1] Mr. St. Clair remained in a chair, while Ms. Ripani removed her personal belongings from the house. After approximately ten minutes, the officers determined that it was no longer necessary to detain Mr. St. Clair.

DISCUSSION

The case is presently before the court on the defendants' motion for summary judgment. Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is properly granted if "there is no genuine issue as to any material fact and the … moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). For a party's evidence to raise a genuine issue of material fact to avoid summary judgment, it must be "such that a reasonable jury could return a

[1] The court notes that the parties' versions of the facts begin to differ at this point. Defendant Mollin testified at his deposition that when he opened the side door, which was partially cracked, Mr. St. Clair drew his left arm. Mr. St. Clair testified that Officer Mollin "busted" down the side door, grabbed him by his right arm, slammed him to the floor, and placed him in handcuffs.

verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In determining whether to grant a motion for summary judgment, the court must view the record in the light most favorable to the non-moving party. Terry's Floor Fashions, Inc. v. Burlington Industries, Inc., 763 F.2d 604, 610 (4th Cir. 1985).

Plaintiff's § 1983 Claims against Officer Mollin

Section 1983 imposes civil liability on any person acting under color of law to deprive another person of rights and privileges secured by the Constitution and laws of the United States. 42 U.S.C. § 1983. In this case, Mr. St. Clair alleges that Officer Mollin deprived him of his Fourth Amendment rights, when the officer entered his house without a warrant and handcuffed him.

Officer Mollin contends that he is entitled to qualified immunity with respect to Mr. St. Clair's § 1983 claims. Qualified immunity protects government officials from civil damages in a § 1983 action "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). In determining the applicability of a qualified immunity defense, the court must engage in a two-step analysis. See Saucier v. Katz, 533 U.S. 194, 201 (2001). The "threshold question" in the qualified immunity analysis on summary judgment is whether, "[t]aken in the light most favorable to the party asserting the injury, … the facts alleged show [that] the officer's conduct violated a constitutional right." Id. If the answer to this question is "no," the analysis ends and the plaintiff cannot prevail. Gomez v. Atkins, 296 F.3d 253, 261 (4th Cir. 2002). If the answer is "yes," the court "must then consider whether, at the time of the violation, the constitutional right was clearly established, that is, 'whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" Id. (quoting

Saucier, 533 U.S. at 201-202)). The United States Court of Appeals for the Fourth Circuit has emphasized that qualified immunity protects law enforcement officers from "bad guesses in gray areas" and it ensures that they may be held personally liable only "for transgressing bright lines." Maciariello v. Sumner, 973 F.2d 295, 298 (4th Cir. 1992).

Mr. St. Clair's first § 1983 claim is that Officer Mollin violated his Fourth Amendment rights by entering his house without a warrant. Although a warrantless entry is generally prohibited by the Fourth Amendment, this prohibition "does not apply … to situations in which voluntary consent has been obtained, either from the individual whose property is searched, or from a third party who possesses common authority over the premises." Illinois v. Rodriguez, 497 U.S. 177, 181 (1990). An officer may rely on the apparent authority of a person providing consent, if the facts available at the time of entry would warrant a person of reasonable caution to believe that the consenting party had authority over the premises. Id. at 188. See United States v. Donlin, 982 F.2d 31, 33 (1st Cir. 1992) (holding that the defendant's wife validly consented, over the defendant's objections, to the officers' warrantless entry when she produced a key to the apartment and insisted on gathering personal belongings from inside).

With these principles in mind, the court concludes that the facts known to Officer Mollin at the time he entered Mr. St. Clair's house were sufficient to warrant a person of reasonable caution to believe that Ms. Ripani had authority over the house and that she wanted the officer to enter it. Ms. Ripani, after recounting the domestic dispute with Mr. St. Clair, told Officer Mollin and Sergeant Engel that she lived at Mr. St. Clair's house and that she needed help retrieving some of her personal belongings. Ms. Ripani apparently had a key to the house, since she returned to her car to get a key after Mr. St. Clair failed to answer the front door. While Mr. St. Clair argues that Ms. Ripani could not validly consent to the warrantless entry because she

moved out of the house several days before the incident, there is no evidence that Officer Mollin was aware of this information at the time he entered the house. The court notes that a warrantless entry premised on a third party's consent is valid, even if the third party later proves not to possess common authority, as long as the officer's belief that such authority existed was reasonable at the time of entry. See Illinois v. Rodriquez, 497 U.S. at 186; United States v. Kinney, 953 F.2d 863, 86-867 (4th Cir. 1992). Based on the facts known to Officer Mollin, the court concludes that the officer reasonably believed that he had valid consent to enter Mr. St. Clair's house. Accordingly, the officer's warrantless entry did not violate the plaintiff's Fourth Amendment rights.

Mr. St. Clair's second § 1983 claim is that Officer Mollin violated his Fourth Amendment rights by handcuffing him. Although Mr. St. Clair was not formally arrested, it is undisputed that he was subjected to a Fourth Amendment seizure as a result of being handcuffed. See United States v. Mendenhall, 446 U.S. 544, 554 (1980) (concluding that a person has been "seized" within the meaning of the Fourth Amendment "if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."). Therefore, the court must determine whether the evidence, viewed in the light most favorable to Mr. St. Clair, leads to the conclusion that the seizure violated the Fourth Amendment.

The Fourth Amendment prohibits only unreasonable searches and seizures. "As a general rule, after initial questioning, any further detention … is reasonable for Fourth Amendment purposes only if it is 'based on consent or [on] probable cause [for arrest].'" Figg v. Schroeder, 312 F.3d 625, 636 (4th Cir. 2002) (quoting United States v. Brignoni-Ponce, 422 U.S. 873, 882 (1975)). An officer has probable cause for arrest if the facts known to him at the time

would warrant the belief of a reasonable officer that an offense had been or was being committed. Brown v. Gilmore, 278 F.3d 362, 367 (4th Cir. 2002) (citing Wong Sun v. United States, 371 U.S. 471, 479 (1963)). "Probable cause requires more than 'bare suspicion' but requires less than evidence necessary to convict." Porterfield v. Lott, 156 F.3d 563, 568-571 (4th Cir. 1998) (quoting United States v. Gray, 137 F.3d 765, 769 (4th Cir. 1998)).

Officer Mollin contends that he had probable cause to believe that Mr. St. Clair had violated Virginia Code § 18.2-57.2 (Assault and battery against a family or household member). Pursuant to this statute, "[a]ny person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor."[2] An assault requires an overt act, an attempt, or the unequivocal appearance of an attempt, with violence and force, to do physical injury to the person of another. Zimmerman v. Commonwealth, 266 Va. 384, 387, 585 S.E.2d 538, 539 (2003) (noting that "[t]here is no requirement that a victim be physically touched to be assaulted."). A battery is defined as an unlawful touching of another. Adams v. Commonwealth, 33 Va. App. 463, 469, 534 S.E.2d 347, 350 (2000) (emphasizing that "[i]t is not necessary that the touching result in injury to the person.").

Considering the totality of the circumstances known to Officer Mollin, the court concludes that there was sufficient information to warrant the belief of a reasonable officer that the plaintiff had violated the assault and battery statute. Ms. Ripani went to the police station and told Officer Mollin that Mr. St. Clair had pushed her, thrown a flower pot at her, and verbally assaulted her. After arriving at Mr. St. Clair's house, Officer Mollin saw a broken flower pot in the driveway, which corroborated Ms. Ripani's story. Upon seeing Officer Mollin,

[2] Subsection (D) of § 18.2-57.2 incorporates the definition of "family or household member" contained in Va. Code § 16.2-228. The definition of "family or household member" includes "any individual who cohabits or who, within the previous twelve months, cohabited with the person." Va. Code § 16.1-228.

Mr. St. Clair began yelling at the officer and adamantly told him to leave the property. Because a reasonable officer could have believed that there was probable cause to arrest Mr. St. Clair for violating the statute, Officer Mollin did not infringe upon his Fourth Amendment rights by handcuffing him for less than ten minutes. See Figg, 312 F.3d at 637 (4th Cir. 2002) (holding that the defendants did not violate the Fourth Amendment by detaining the plaintiffs for a few hours, since the defendants had probable to arrest them).

For these reasons, the court concludes that the facts viewed in the light most favorable to the plaintiff do not establish a violation of his constitutional rights. Although it is unnecessary to reach the second step of the qualified immunity analysis, the court notes that even if Officer Mollin had acted unlawfully, the officer's actions did not transgress any bright Fourth Amendment lines. Accordingly, Officer Mollin is entitled to qualified immunity, and the court will grant his motion for summary judgment with respect to the plaintiff's § 1983 claims.

Plaintiff's § 1983 Claims against the Town of Rocky Mount

Mr. St. Clair alleges that the Town of Rocky Mount is liable for Officer Mollin's actions, because the Town knew or should have known of the officer's actions and permitted such actions as its custom or practice. Having concluded that Officer Mollin did not violate Mr. St. Clair's constitutional rights, the plaintiff's municipal liability claims fail as a matter of law. See Belcher v. Oliver, 898 F.2d 32, 36 (4th Cir. 1990) ("Because it is clear that there was no constitutional violation we need not reach the question of whether a municipal policy was responsible for the officers' actions."). However, even assuming that Officer Mollin did violate Mr. St. Clair's constitutional rights, Mr. St. Clair has not submitted any evidence to suggest that Officer Mollin's actions resulted from an official policy or custom of the Town. See Monell v. Dept. of Social Services, 436 U.S. 658, 694 (1978); Spell v. McDaniel, 824 F.2d 1380, 1385-1387 (4th

Cir. 1987). Accordingly, the Town of Rocky Mount is entitled to summary judgment with respect to Mr. St. Clair's § 1983 claims.

Plaintiff's State Claims

Mr. St. Clair asserts several state claims against the defendants, including assault, battery, false arrest, trespass, and intentional infliction of emotional distress. Having found in favor of the defendants on the plaintiff's federal claims, the court declines to exercise jurisdiction over his remaining state claims. 28 U.S.C. § 1367(c)(3). Plaintiff's state claims will be remanded to the Circuit Court for the County of Franklin. See Farlow v. Wachovia Bank of N.C., 259 F.3d 309, 316 (4th Cir. 2001). [3]

CONCLUSION

For the reasons stated, the defendants' motion for summary judgment is granted with respect to the plaintiff's § 1983 claims. The remaining state claims against the defendants will be remanded to the Circuit Court for the County of Franklin.

The Clerk is directed to send certified copies of this Memorandum Opinion and the accompanying Order to all counsel of record.

[3] In Farlow, the United States Court of Appeals for the Fourth Circuit explained the options that district courts have when determining whether to maintain jurisdiction over supplemental state law claims in a case removed from state court. The Court explained as follows:

> In United Mine Workers of America v. Gibbs, 383 U.S. 715, 16 L. Ed. 2d 218, 86 S. Ct. 1130 (1966), the predecessor of 28 U.S.C. § 1367, the 1990 statute with respect to supplemental jurisdiction, the Court, although not denying the right of the district court to decide pendent claims, stated that "Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." Gibbs, 383 U.S. at 726. Following Gibbs, the Court decided in Carnegie-Mellon University v. Cohill, 484 U.S. 343, 357, 98 L. Ed. 2d 720, 108 S. Ct. 614 (1988), that, in a case in which the federal claims had been deleted from the complaint by the plaintiff, before trial, following a removal from a state court, the district court had the discretion to remand the pendent state-law claims to the state court.
>
> The upshot of applying Gibbs, Cohill and § 1367 to this case is that on remand, the district court has the discretion either to dismiss the pendent state-law claims without prejudice, remand the state-law claims to the state court, or decide the merits of the state-law claims if it believes it should not follow the statement we have quoted from Gibbs.

ENTER: This 1st day of February, 2005.

/s/ GLEN E. CONRAD
United States District Judge

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SAMUEL O. ST. CLAIR	)	
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Plaintiff,	)	Civil Action No.: 7:04CV00154
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v.	)	**ORDER**
	)	By: Hon. Glen E. Conrad
TOWN OF ROCKY MOUNT	)	United States District Judge
and ERIK L. MOLLIN	)	
	)	
Defendants.	)	

This case is before the court on the defendants' motion for summary judgment. For the reasons stated in a Memorandum Opinion filed this day, it is hereby

ORDERED

as follows:

1. Defendants' motion for summary judgment is **GRANTED** with respect to plaintiff's § 1983 claims.
2. Plaintiff's remaining state claims are **REMANDED** to the Circuit Court for the County of Franklin.

The Clerk is directed to strike the case from the active docket of the court, and to send a certified copy of this Order and the attached Memorandum Opinion to all counsel of record. The Clerk shall forward the original state court file, as well as all filings generated before this court, to the Clerk of the Circuit Court for the County of Franklin.

ENTER: This 1st day of February, 2005.

/s/ GLEN E. CONRAD
United States District Judge